IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.183 OF 2005

Smt. Rima Rajesh Sinha @
Seema .... Petitioner
Vs.
Rajkumar Khandelwal & Ors. .... Respondents

Shri Omprakash Pandey i/b M/s. Pandey & Co.
for the Petitioner.

Shri D.S. Mhaispurkar, Addl. Public Prosecutor,
for the Respondent-State.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: FEBRUARY 14, 2005

P.C:

1. Heard. The petitioner challenges the process issued by the learned Metropolitan Magistrate in Case No.203/S/1996 under Section 630 of the Companies Act. The contention of the petitioner is that the petitioner is the licensee in relation to the suit flat, however, the complainant, who is the respondent No.1 herein, by suppressing the said fact has been able to obtain the order of issuance of process against the petitioner. The learned Metropolitan Magistrate has further framed charge against the petitioner under Section 360 of the Companies Act in the said complaint.

2. At the outset, it is to be noted that the process

was issued in the case in hand as long back as on 30-5-1996. Undoubtedly, the charges have been framed on 20-10-2004. The petition has been filed on 18-1-2005. It is also to be noted that the petitioner had filed Criminal Revision Application No.92 of 2001. However, the same was withdrawn on 8-3-2001. It is also to be noted that an application for recall of the process was filed based on **K.M. Mathew v. State of Kerala & Anr.,** reported in (1992) 1 SCC 217, a decision of the Apex Court. The same was rejected by the learned Metropolitan Magistrate by his order dated 5-10-2004 taking note of the later decision of the Apex Court in Criminal Appeal No.91 of 2002 in the matter of **Adalat Pradas v. Rooplal Jindal & Ors.,** reported in 2004 AIR SCW 5174. The revision application against the said order was also rejected by the learned Addl. Sessions Judge in Revision Application No.974 of 2004 by his order dated 16-11-2004. Meanwhile, the learned Metropolitan Magistrate had framed the charges on 20-10-2004.

3. Apart from the unexplained laches on the part of the petitioner in approaching the Court with the petition, even on merits there is absolutely no case for interference. The order issuing the process passed on 30-5-1996 apparently discloses that the complaint was filed by one of the Directors of M/s. Vijay Auto

Industries Pvt. Ltd., stating that the premises in question belong to the said company and that they were acquired with the intention of accommodating the senior most executive of the company on rent-free basis. It further discloses that in accordance with the terms of the employment one Shri Jainarayan Prasad Sinha, the father-in-law of the petitioner herein, was inducted in the said flat as the company's employee. The said Jainarayan expired on 23-1-1996. Consequently, the family of Jainarayan as well as any legal representative of Jainarayan in occupation of the suit flat ought to have vacated the same and having not done so, complaint came to be filed. These facts having been disclosed by the complainant, obviously the process has been issued under Section 630 of the Companies Act.

4. In case the petitioner has any defence to raise in the form of the petitioner being the licensee in relation to the suit premises, it would be for the petitioner to raise such defence in answer to the charge and the Court will have to deal with the same in accordance with the provisions of law. It is too premature for this Court to non-suit the complainant on the said allegation by the petitioner in this petition. The legality and propriety of the order issuing the process cannot be tested on the basis of the evidence which the accused may have in his/her possession and

which is yet to be produced by him/her before the learned Magistrate. Being so, on merits also there is no case for interference in the order issuing the process.

5. For the reasons stated above, the petition deserves to be dismissed with costs and is accordingly dismissed.

(R.M.S.Khandeparkar, J.)

(P.V.Kakade, J.)